



July 17, 2000

Mr. Miles T. Bradshaw
Senior Assistant General Counsel
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2000-2691

Dear Mr. Bradshaw:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137100.

The Houston Independent School District (the "district") received a request for information involving its management training contract with Main Event Management Corporation, including information relating to the Consulting Associate Training Program ("CATP") for Systems Control Specialists ("SCS"). You inform us that five of the six categories of requested information have been released. You seek to withhold responsive information "regarding action taken by [the district] relating to its collection efforts for and the disposition of all CATP contracts that have been broken by SCS after graduation." You claim that the information in question, which you have submitted as stamped page numbers 1-143, is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially we note that the responsive documents contain information that is within the scope of section 552.022(a) of the Government Code. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Sections 552.101, 552.103, 552.107, and 552.111 of the Government Code are not "other law," under section 552.022(a), that make any of the information enumerated by section 552.022(a) expressly confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Therefore, the documents that bear stamped page numbers 7, 13, 18, 30, 40, 50, and 100 are subject to required public disclosure under section 552.022(a)(3) and must be released.

Next we must consider whether the balance of the submitted information also must be released because of the district's failure to comply with section 552.301 of the Government Code in requesting this ruling. Section 552.301 provides in relevant part that a governmental body that seeks to withhold requested information from the public "must ask for the attorney general's decision *and state the exceptions that apply* . . . not later than the 10th business day after the date of receiving the written request [for information]" (emphasis added). Gov't Code § 552.301(b). Section 552.302 provides as follows:

If a governmental body does not request an attorney general decision as provided by Section 552.301 and provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Gov't Code § 552.302. You state that the district received the written request for the submitted information on April 27, 2000. Therefore, pursuant to section 552.301(b), the district had 10 business days, or until and including May 11, in which to request this ruling and state the exceptions to disclosure that district deems to be applicable. Although you did request a ruling in your letter dated May 11, you did not raise the district's exceptions to disclosure in that letter. Your exceptions are raised in your letter dated May 18. Because the district failed timely to raise its exceptions to disclosure, as required by section 552.301(b), the information requested in writing must be released unless there is a compelling reason to withhold that information from the public.

As sections 552.103, 552.107, and 552.111 are discretionary exceptions to required public disclosure that a governmental body may waive, the district's exceptions under those sections are not compelling reasons that overcome its failure to comply fully with section 552.301. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 380-81 (Tex. App.--Austin 1990, no writ); Open Records Decision Nos. 665 at 2 n.5 (2000), 630 at 3 (1994). A claim of confidentiality under section 552.101 can furnish such a compelling reason. *See* Gov't Code § 552.007(a) (providing that Public Information Act does not prohibit release of information "unless the disclosure is expressly prohibited by law or the information is confidential under law"); Open Records Decision No. 150 (1977). In this instance, however, the district's claim under section 552.101 does not suffice, as section 552.101 does not encompass discovery privileges. *See* Open Records Decision

No. 575 at 2 (1990) (construing statutory predecessor). Therefore, except as specified below, the balance of the submitted information must be released.

Section 552.117 of the Government Code excepts from disclosure the home address, home telephone number, or social security number of a present or former employee of a governmental body, or information that reveals whether such a present or former employee has family members, if the employee has elected to not allow public access to this information in accordance with section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(1), 552.024(a); *see also* Open Records Decision Nos. 622 (1994), 530 (1989), 455 (1987). We also have labeled the kind of information that the district may be required to withhold under sections 552.117(1) and 552.024(a).

A present or former public employee's social security number information also may be excepted from disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*¹ *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number in the submitted information was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, 552.352. Therefore, prior to releasing any social security number, the department should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also protects information that is subject to the common law right of privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information in question is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found.*, 540 S.W.2d at 685. The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *See* 540 S.W.2d at 683; *see also* Open Records Decision No. 659 at 5 (1999). Some personal financial information is protected by the common law right of privacy. *See* Open Records

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Decision No. 373 (1983). That determination is made on a case-by-case basis. *Id.* at 4. We have labeled the personal financial information that the district must withhold under section 552.101 in conjunction with common law privacy. *See also* Open Records Decision No. 600 at 9-12 (1992).

In summary, a portion of the submitted information is subject to required public disclosure and must be released pursuant to section 552.022(a)(3) of the Government Code. Because of the district's failure to comply with section 552.301(b) of the Government Code in requesting this ruling, the rest of the submitted information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold any of that information from the public. The district's untimely claims under sections 552.101, 552.103, 552.107, and 552.111 are not sufficient to overcome the presumption of openness under section 552.302. The submitted documents contain social security number and other personal information relating to former employees of the district that may be confidential under sections 552.117 and 552.101. The submitted documents also contain personal financial information that is confidential and must be withheld under section 552.101 in conjunction with the common law right of privacy. Except for information that is protected from disclosure under section 552.117 or section 552.101, the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

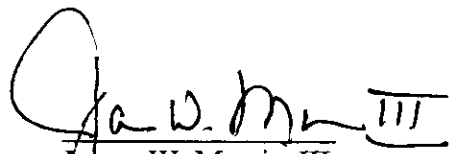
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137100

Encl. Submitted documents

cc: Mr. Sam M. 'Trey' Yates, III
952 Echo Lane, Suite 465
Houston, Texas 77024
(w/o enclosures)